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AN

ADDRESS

OF THE

Council of Cenſors,

TO THE

People of Vermont.

WESTERN DISTRICT, VERMONT.
BENNINGTON:
Printed by Anthony Haſwell.

M,DCCC.

An Addreſs.

To the PEOPLE of the STATE of VERMONT.

Reſpected Fellow Citizens,

YOUR Council of Cenſors, elected in the month of March laſt, agreeable to the conſtitution, having accepted their appointment and duly proceeded to the examination of the various important concerns committed to their charge, ſubmit the following as the reſult of their deliberations to you, the people, as the true fountain of government, and the original ſource of delegated power.

The council after due deliberation on the expediency of reviſing and amending the conſtitution, have ultimately concluded not to recommend any alterations; and although every member of this board has manifeſted an opinion, that alterations might poſſibly be made, for the greater ſecurity of our ineſtimable rights, yet the preſent convulſed ſtate of political opinion, renders the preſent an unſuitable period for entering on ſuch an important buſineſs.

"To enquire whether the conſtitution has been preſerved inviolate, in every part, during the laſt ſeptenary, and whether the legiſlative and executive branches of government have performed their duty, as guardians of the people, or aſſumed to themſelves or exerciſed other or greater powers than they are entitled to by the conſtitution; alſo, to enquire, whether the public taxes have been juſtly laid and collected in all parts of this commonwealth, in what manner the public monies have been diſpoſed of, and whether the laws have been duly executed," are the

truly painful but aſſigned duties of this board. On the one hand to touch the character and conduct of thoſe public functionaries, in whom the people have repoſed the higheſt confidence, is an irkſome and undeſirable buſineſs; yet on the other, to admit any man, or ſet of men in community, to rule and govern without limit, controul, or accountability, is an evil of ſuch magnitude, as to ſtrip the duty of its diſagreeable tints, by evincing its abſolute neceſſity.

Public officers are thus arraigned before the tribunal of the ſovereign people, whoſe ſervants they are, and by whom alone they are inveſted with certain degrees of power.

Under theſe impreſſions we have cheerfully attended to our duty, and with diffidence of our own opinions, and reſpect for the abilities of thoſe who have adminiſtered the government, preſent the following.

That in examining the proceedure of the legiſlature during the laſt ſeptenary, we are of opinion, that except in a few inſtances, they have conducted public concerns agreeable to the rules preſcribed by the conſtitution. The exceptions which we advert to are as follows, viz.

In the ſixth ſection of the 58th chapter of the laws, entitled "*An act directing the mode of elections,*" &c. paſſed October 26th 1796, the ſupreme court are empowered to diſfranchiſe a freeman for *any evil practice which ſhall render him notoriouſly ſcandalous.* This part of the ſection, independent of its vague and uncertain meaning, is againſt the letter and ſpirit of the eighth article of the bill of rights, and the 34th ſection of the form of government, the former only declares *That all elections ought to be free and without corruption,* the latter, points out what conſtitutes the crime of bribery in elections, and the puniſhment therefor, leaving to the legiſlature the right of adding farther

penalties for the crime, as therein aſcertained.——

The Council are fully of opinion, that the framers and adopters of the conſtitution, contemplated to preſerve inviolate the right of ſuffrage to every freeman, unleſs he ſhould in fact forfeit the right, by acting wickedly and corruptly, relating only to that ineſtimable privilege.

The 9th ſection of the 15th chapter of the laws, entitled *An Act relating to fines and forfeitures, &c.* paſſed by the legiſlature in March, 1797, ſubjects perſons acquited by a jury in criminal proſecutions, to pay coſt in certain caſes, at the diſcretion of the court or juſtice of the peace before whom the trial is had.

This law in the opinion of this board is an infringment of the 16th ſection of the bill of rights, which declares, *That in all proſecutions for criminal offences, a man hath a right to be heard by himſelf and his council, to demand the cauſe and nature of his offence, to be confronted with the witneſſes, to call for evidence in his favor, and to have a ſpeedy public trial by an impartial jury of his country, without the unanimous conjent of which jury he cannot be found guilty.*

It will be clearly diſcerned, by every candid and reflecting mind, that the power here given, does not ſubject the citizen to any kind of penalty in a criminal proſecution, where trial is had by jury, unleſs ſuch jury firſt unanimouſly declare him guilty.

To ſuppoſe the free citizens of this ſtate to be ſubjected to any pains, penalties, or coſt, for the ſame charge on which they had been acquited, is not only a violation of the conſtitution, but inconſiſtent with the principles of juſtice and humanity.

The 51ſt chapter, entitled, an act to ſupport the goſpel, paſſed Oct. 26, 1797, excepting the firſt and laſt ſections, ought to be repealed.

This act the council are ſenſible, embraces a ſubject of the moſt important and delicate concern to community and to individuals; they therefore entered upon the conſideration of it with the utmoſt precaution, and examined it with care: yet they could not paſs it in ſilence, the duties enjoined on them by the conſtitution requiring, that they ſhould attend to the infringements of the rights of individuals, as well as of diſtinct claſſes of citizens.

The third article in the bill of rights, ſays,

That all men have a natural and unalienable right, to worſhip Almighty God, *according to the dictates of their own conſciences and underſtandings, as in their opinion ſhall be regulated by the word of God: and that no man ought to, or of right can be compelled to attend any religious worſhip, or erect or ſupport any place of worſhip, or maintain any miniſter, contrary to the dictates of his conſcience, nor can any man be juſtly deprived or abriged of any civil right as a citizen, on account of his religious ſentiments, or peculiar mode of religious worſhip; and that no authority can, or ought to be veſted in, or aſſumed by, any power whatever, that ſhall in any caſe interfere with, or in any manner control the rights of conſcience, in the free exerciſe of religious worſhip. Nevertheleſs, every ſect or denomination of chriſtians ought to obſerve the ſabbath or Lord's day, and keep up ſome ſort of religious worſhip, which to them ſhall ſeem moſt agreeable to the revealed will of God.*

The framers of the bill of rights, by this article, indiſputably meant to convey the idea, that man neceſſarily poſſeſſes natural knowledge, or ſimple reaſon, which they have deſignated by the name of conſcience. This they declare is inalienable, clearly conveying the idea, that one man cannot convey to another man his individual right of worſhipping God

according to the dictates of his conſcience, any more than he can convey to him his right of breathing; for it is impoſſible in the nature of things, that one perſon can be profited intellectually, by a conveyance to him of another perſon's right of thinking; and if theſe premiſes are correct, it certainly follows, that the rights of conſcience cannot be deputed; that religion is a concern perſonally and excluſively operative between the individual and his God; and that whoever attempts to control this ſacred right, in any poſſible way, does it by uſurpation and not by right.

The ſecond clauſe of the third article, as above recited, ſays, "No man ought to, or of right can be compelled to attend any religious worſhip, or erect or ſupport any place of worſhip, or maintain any miniſter contrary to the dictates of his conſcience." Here again conſcience is made the only criterion by which a man can poſſibly be bound, in the execution of ſuch deſigns; in oppoſition to which, the law we hereby propoſe to have repealed, expreſsly binds the citizens of this ſtate, indiſcriminately, to erect and ſupport places of public worſhip, and to maintain miniſters, contrary to this clearly defined right, provided they are ſo unfortunate as to be in the minority in any town, who may act under the authority of this law, and who are not at the time of taking the vote, poſſeſſed of a certain preſcribed certificate.

Could not the legiſlature as well declare, that the inhabitants of every town in this ſtate, ſhould build a houſe for public worſhip, and ſettle and ſupport a congregational miniſter, provided a certain number thereof were not poſſeſſed of a certificate, that they ſupported a miniſter of a different denomination? This would only ſupport the ſame ground that the law contemplates, as in both caſes the minority are

only ſubjected by the majority. But in no caſe have civil power any conſtitutional right to interfere in religious concerns, except to bind perſons or communities to diſcharge their civil contracts, individually entered into, for the mutual ſupport of religious ſocial worſhip.

In conſonance with theſe ideas, the article before recited, expreſsly declares, that no authority can, or of right ought to be veſted in, or aſſumed by any power whatever, that ſhall in any caſe interfere with, or in any manner control the right of conſcience, in the free exercile of religious worſhip.

The foregoing ſections and part of ſections of laws, are in the opinion of the council, repugnant to the Conſtitution; and in enacting them into laws, the legiſlature have aſſumed upon themſelves, and exerciſed greater powers, than they are entitled to by the Conſtitution. And under this impreſſion the council recommend the repeal of each and every of the above recited clauſes, to reſtore community to their ineſtimable conſtitutional privileges, and prevent the eſtabliſhment of precedents dangerous to, and ſubverſive of, the deareſt rights of freemen.

In examining the journals of the houſe of repreſentatives, the council are happy to ſay, that they have found the proceedings of that houſe, a few inſtances excepted, regular and proper. The admiſſion of Stephen Buchannon to a ſeat, in the houſe, of repreſentatives in Oct. 1796, who was not elected on the day pointed out by the Conſtitution, they deem unconſtitutional, as there is no article in that inſtrument to warrant the houſe in ſuch a procedure.

The 8th ſection of the conſtitution declares,

Art. 8. *That all elections ought to be free and without corruption, and that all freemen having a ſufficient, evident common intereſt with, and attachment to the commu-*

city, have a right to elect officers, and be elected into office, agreeably to the regulations made in the conſtitution

The 9th ſection of the conſtitution defines the powers of the legiſlature, the latter claule of which is in the following words, " and they ſhall have all other powers neceſſary for the legiſlature of a free and sovereign ſtate: but they ſhall have no power to add to, alter, aboliſh, or infringe any part of this conſtitution."

We likewiſe find on the journals of the houſe repeated inſtances of reſolutions, paſſed by the houſe, authorizing different towns on various occaſions, to elect repreſentatives to repreſent them in the general aſſembly, and that in conſequence of ſuch reſolutions, repreſentatives have been elected on days not appointed for their election by the conſtitution, who have taken their ſeats accordingly.

The council are of opinion, that the ſame reaſons which were offered in the caſe of Mr. Buchannon, will apply with equal force in theſe inſtances reſpectively.

From the journals of October 1799, the following extracts (being the whole that relate to the ſubject) are ſelected and offered to the public with ſome comments thereupon.

In General Aſſembly, October 22d, 1799.

The following communication from the honorable Council of Cenſors, was laid before the houſe, to wit:

STATE OF VERMONT, }
Windſor, Oct. 21, '99. }

To the honorable General Aſſembly now in ſeſſion at Windſor.

WHEREAS the Council of Cenſors now ſitting at Windſor, in their enquiries do find, that William Coley, eſq while high ſheriff of the county of Bennington, did wittingly and willingly take and receive

for ſummoning the grand and petit jurors, to ſerve before the ſupreme court at their ſeſſion holden at Manchester, in the month of February laſt, greater fees for his ſaid ſervices, than allowed by the laws of the ſtate, under color of his ſaid office of ſheriff, as aforeſaid.

And further that the ſaid William Coley, eſq. while high ſheriff of ſaid county, did wittingly and willingly take and receive, for ſummoning the petit jurors to ſerve before the ſupreme court holden at Manchester by adjournment, in the month of June laſt, greater fees for ſaid ſervices, than allowed by the laws of the ſtate, under color of his ſaid office of ſheriff, as aforeſaid.

Which taking and receiving ſaid fees, as aforeſaid, is contrary to, and in violation of the laws and Conſtitution of the ſtate.

The Council of Cenſors do therefore in purſuance of their duty, and by the authority veſted in them, *order*, that the ſaid William Coley, ſheriff as aforeſaid, be impeached before the Governor and Council of the ſtate, for the mal-adminiſtration of his office as aforeſaid.

And that this order be ſigned by the preſident, and counterſigned by the ſecretary of this board, and by him tranſmitted to the ſpeaker of the General Aſſembly, with the names of the witneſſes, to ſupport the charges of mal-adminiſtration. (Signed)

By order of the Board. MOSES ROBINSON, Pres.
DAVID FAY, Secretary. *

* To this communication the council annexed the following names as witneſſes neceſſary to ſupport the impeachment, viz.

Sam'l. Robinſon 2d, of Bennington. with the original venires.
David Robinſon, Bennington,
Lemuel Bradley, Sunderland,
Gideon Ormſby, Manchester,
John Shumway, Dorſet,
David Sheldon, Rupert,
Tyrus Hurd, Arlington.

N. B. This does not appear on the records of the houſe.

October 26*th*, 1799.

The houſe went into the conſideration of the foregoing order. On motion,

The houſe reſolved itſelf into a committee of the whole houſe, upon the ſubject of the ſaid communication, and after ſometime ſpent therein, Mr. Speaker reſumed the chair, and Mr. Gideon Olin reported, that the committee had, according to order, had the ſaid communication under conſideration, and do recommend to the houſe to adopt meaſures to carry into *effect* the ſaid order of the council of cenſors.

Whereupon, On motion,

Ordered, That the houſe do accept the ſaid report.

October 30*th*, 1799.

The house went into further conſideration of the order from the Council of Censors.

On motion, *Reſolved*, That the ſaid communication be referred to a committee conſiſting of one member from each county, to ſtate facts in detail, and make report to the houſe:

And a committee was appointed, of Mr. Richard Hurd, Mr. Blake, Mr. Hammond, Mr. Zebina Curtis, Mr. Chipman, Mr. Johnſon, Mr. Hay, Mr. Bean, and Mr. Francis Davis. *November* 2*d*, 1799.

The committee to whom was referred the order of the Council of Cenſors, relative to the impeachment of William Coley, made report that the ſaid William Coley, by himſelf and his deputies, ſummoned the grand and petit jurors to attend the ſupreme court at Mancheſter, in February laſt, and that he in like manner ſummoned, the petit jurors to attend the ſaid ſupreme court in June laſt, That he the ſaid Coley, exhibited his charges to the judges of the ſupreme court, who allowed the ſame, amounting in the whole to thirty-eight dollars, twenty-ſeven cents, That it was obſerved by ſaid judges, on examining his account for ſaid ſervices, that his charges were high, to

which the said Coley replied, that he had been obliged to travel several times into some of the towns, before he could procure a draught of jurors. That on a computation, we find the said sheriff's fees for travel, computing from the place of service on each juror to place of return, amount to twenty five dollars, seventy-four cents. That we have no proof on what number of said jurors, service was made by copy, but computing only sixteen of forty-two to have been served by copy, the amount would have been, four dollars, twenty three cents. That we have no absolute proof for what number of jurors the said venire issued, or on what number it was served, but as the law required that the venire for each petit jury should issue for the number of fifteeen we are to presume that the venire did issue for that number, and that service was made accordingly; And that the service on the said six other jurors not before estimated, on an average with those before estimated, would amount to three dollars and sixtysix cents; that the amount of fees for extra travel as before stated, and which have been proved to us is four dollars twenty eight cents; that the amount of actual travel to the several town clerks and justices when he did make a draft of jurors, is four dollars ninety eight cents; that we have no positive proof of any other extra travel; but we fully believe the said Coley did go twice to Sandgate, and once to Dorset, before he could obtain a draught of jurors; which would amount to two dollars thirty four cents, amounting in the whole to forty five dollars, twenty three cents the amount of the items contained in the above statements for which we have no positive proof, is six dollars, which deducted from the above sum, there remains, thirty nine dollars twenty three cents.

We further report, that on examination of the treasurer with his books, the whole sum that has been paid to said Coley, for his services the year past, is fifty three dollars and sixty five cents; which includes his own person-

al attendance, on the several terms of the supreme court, in February and June last, as also his fees for removing a prisoner from Bennington to Manchester. From all which it fully appears to the committee, that the charges exhibited against the said Coley, are wholly unsupported.

(Signed)

RICHARD HURD, for committee.

The said report being read, was accepted.

On motion,

Resolved, That on examination of the charges exhibited to this House against William Coley, sheriff of Bennington county, by the Council of Censors, in their order of the 21st October, 1799, they appear to be wholly unsupported. And that the said order be dismissed.

On motion,

Resolved, That a committee be appointed to examine the Fee-Bill, and to report to the House what alterations, if any, are necessary to be made in the said bill

And a committee was appointed of Mr. Wright, Mr. Butler, and Mr. Shumway.

November 5, 1799.

The committee appointed to examine the Fee-Bill, &c. Made Report,

That upon examining the law, are of opinion it cannot be construed so as to give an officer more than six cents per mile, for actual travel for serving any one process, altho' several persons may be named in it, and served on the same, except it be a forced construction Therefore, are of opinion that no alteration ought to be made.

[Signed]

JOSIAH WRIGHT, for committee.

The foregoing is a true copy from the Journals.

Examined *Samuel C. Crafts, clerk of G. A.*

From this record it appears, that the board of Cenſors ordered, that William Coley, ſheriff of Bennington county, ſhould be impeached before the governor and council, for taking in three inſtances, greater fees than were allowed by law.

The 43d ſection of the conſtitution inveſts the Council of Cenſors, among other important powers, with the right to order impeachments.

The 24th ſection of the conſtitution makes it the duty of the houſe of repreſentatives to impeach, and the governor or lieutenant governor and council, to hear, try, and determine impeachments.

Theſe premiſes will warrant the concluſion, that when the council of cenſors ſhall order an impeachment, the houſe of repreſentatives are the only board or conſtituted authority, to whom ſuch order can be directed; and who, on receiving ſuch order, are conſtitutionally bound to proceed to tranſmit to the governor and council articles of impeachment, who are to cauſe the acculed to be notified, to proceed to the examination of the facts, and to render ſentence accordingly: in which buſineſs the houſe of repreſentatives are by no means inveſted with concurrent authority with the governor and council, or with diſcretionary power in the execution of orders conſtitutionally directed to them. But if the tranſactions of the houſe of repreſentatives as recorded on their journals, are juſt and proper, the concluſion muſt be, that the council of cenſors have a right to order the houſe of repreſentatives to impeach, but that the houſe ſo far from being obliged to comply with the orders, can reject, diſmiſs, or ſupercede them at pleaſure.

To admit that the houſe have a right to inveſtigate the facts on which impeachments are founded, when ordered as aforeſaid, admits the further idea, that they have the right of deciding whether they will comply

with the order of the council of cenſors, conſtitutionally directed to them, or not.

It will not be contended that the houſe have a right to try impeachments, their power only extending, when ordered as aforeſaid, to the act of impeaching; But in the preſent exiſting inſtance, the houſe, unconſtitutionally entered upon the trial of facts, in an important cauſe, and made a deciſion in the caſe.

In further examining the tranſactions of the houſe on this ſubject, we are again led to enquire, what principles governed them in their determinations in the caſe referred to. In the firſt place, they go into committee of the whole on the order from the council of cenſors, and the chairman reports a recommendation to the houſe to adopt meaſures to carry it into *effect*, which report was accepted. Thus far the two bodies progreſſed conſtitutionally. The houſe next proceeded to appoint a ſelect committee, to report in detail the facts on which the order of the council of cenſors was made. This proceedure was unconſtitutional, and inconſiſtent with their former conduct on the ſubject; for there appears no motion or reſolve on record, for reconſidering the previous order of the houſe on the report of the committee of the whole, which the proceedure of the ſelect committee not only tended to diſannul, but to render the legal order of the council of cenſors void.

Thus the ſelect committee reported contrary to the report of the committee of the whole; the report of the committee of the whole is diſannulled by the acceptance of the report of the ſelect committee, a legal order from a conſtituted board, contemned by a body conſtitutionally obliged to receive and execute ſuch orders, and the houſe of repreſentatives aſſume the power to hear and determine the facts on which an order of impeachment was predicated.

The report of the select committee so made and accepted, embraces several other objects worthy of attention. In the first place the three crimes alledged against Mr. Coley (either of which, if true, were sufficient to have founded a conviction upon) are, by the assembly consolidated; and by adopting an entirely new and unprecedented mode, allowing seperate travel to each juror, with travel and extra travel to the clerks, they have made up and allowed to Mr. Coley thirty nine dollars and twenty three cents. Which allowance was exorbitant and inconsistent with legality, inconsistent with true calculation on their own acknowledged plan, and even exceeded Mr. Coley's charge, as will appear conspicuous by the following statement.

For summoning the petit jury, in Feb. term, 1799.

Legal charge, as by rule adopted by the supre. court. for actual, viz. circuitous travel, to jurors & cl'ks.	Seperate travel truly calculated, on the assembly's own plan.	Coley's charge for the same, service, as endorsed on the venire.
		dol. 8,31
66 miles travel, at 6 cts. per mile, is dol. 3,96	80 miles travel at 6 cents per mile, is 4,80	
Service by reading, 72	Service by reading, cts. 72	
Total, dols. 4,68	One third of the sum allowed for travel to clerks, dol. 3,08	
	Total, dols. 8,60	

For ſummoning the grand jury, February term 1799.

Legal charge:		Separate travel.		Coley's charge.	
To 102 miles travel, including travel to the clerks, and juſtices, D. C.	6 18	To 237 miles at ſix cts. per mile	dols cts. 14 22	Dols. Cts.	18 09
Service by reading,	1 08	Service by reading,	01 08		
Total	7 26	1-3 allowance as above,	03 08		
		Total	18 38		

For ſummoning the petit jury, June term, 1799.

Legal charge		Separate travel		Coley's charge.	Aſſembly's
To 75 mile travel at ſix cents per mile,	D. C. 4 50	78 miles at 6 cents per mile, is	D C. 4 68	Dols. Cts. 11 87	allowance to Coley, for the above ſervices, D C. 39 83
Service by reading.	72	Service by reading.	72		
	5 22	One third allowance as above,	3 08		
Sum total leg. charge	17 16	Total on the aſſembly's avowed plan. Sep. travel	8 48. 35 56	Total of Coley's charge, dols cts.	38 27

Thus the ſtatement ſhews from exiſting facts, that the legal charge for the three veniries, would be 17 dollars, 16 cents; the charge upon the principle as eſtabliſhed by the aſſembly, would be thirty-five dollars, forty-ſix cents, the charge by Mr. Coley, is thirtyeight dollars, twenty ſeven cents; and the ſum allowed by aſſembly, is thirty nine dollars, twenty three cents.

Hence in the firſt inſtance here ſtated it appears, that the legal charge of Mr. Coley on the plan avowed by the ſupreme court, would have been four dollars, ſixty eight cents, on the avowed plan of the

general assembly, it would have been eight dollars sixty cents ; Mr Coley's charge as appeared by his own return, eight dollars, thirty one cents, which left due to him on the assembly's plan, 29 cents.

In the second instance, legal charge would have been seven dollars, twenty six cents, on the assembly's plan, eighteen dollars, thirty eight cents, Mr. Coley's charge, eighteen dollars, nine cents, which left due to him, twenty nine cents.

In the third instance, legal charge would have been five dollars, twenty two cents, separate travel, eight dollars, forty eight cents, Coley's charge, eleven dollars, eighty seven cents, which taking out the charge on the assembly's plan, together with the fifty eight cents falle credit, exceeded the true calculation on the assembly's plan, two dollars, eighty one cents, and consequently if Mr. Coley was innocent upon the two first, he was criminal on their own scheme upon the third.

Agreeable to the preceding mode of calculation of legal fees, for serving the venires for grand and petit juries, in the nine organized counties in this state, during the ensuing septenary, it would form an aggregate of one thousand three hundred and ninety two dollars, ninety three cents, but if computed on the assembly's new plan, to exculpate Mr. Coley, exclusive of their imaginary estimates, it would amount to three thousand, two hundred and three dollars, six cents, surmounting the legal fees, calculated on the liberal rule avowed by the supreme court, 1810 dollars, 14 cents, or, 417 dollars, 22 cents more than double.

Which pernicious scheme of calculation, the council are persuaded, does involve in it, principles and consequences dangerous to the rights of the people, and having been fully adopted by our last legislature

we deem their conduct, in that inſtance, to have been contrary to juſtice, and therefore highly cenſurable.

In the ſecond place it ſhould be remembered, that the computations were made, and conſented to by the houſe, without having the exiſting documents before them. Had the aſſembly ſo far complied with the order from the council of cenſors, as to have ſent for the original venires, with Mr. Coley's fees and returns endorſed thereon, which conſtituted no inconſiderable part of the evidence, notified by the board to the houſe, as neceſſary to proſecute the impeachment to effect, they would have found that the veneris for the petit jurors, iſſued for twelve only, and alſo the mode in which they were ſerved, and conſequently they would not have fallen into the egregious blunder, which they did when they undertook to conjecture that poſſibly fifteen jurors were ſummoned inſtead of twelve.

The account allowed by the houſe for travel to the ſeveral clerks, and for extra travel to the ſame, being without data to form an opinion upon, we paſs, with ſimply, obſerving, that the law makes no proviſion for any ſuch ſervice, and therefore the rational concluſion is, that the legiſlature in framing the laws, contemplated that the legal fees for ſummoning jurors, would amply compenſate for all the duties requiſite in ſerving venires, and more eſpecially ſo, as the law is calculated to render the ſervice of drawing juries eaſy, by allowing either of the ſelect men of any town to anſwer all the purpoſes of a clerk.

How the treaſurer's books could reflect light on the ſubject of the charge againſt Mr. Coley, the council of cenſors are at a loſs to decide. It is a fact generally known, that the clerks of the ſupreme court, being paid for their ſervice in drawing orders, in pro-

portion to the number drawn, will make out an order for the whole or of any part of an account presented to them: It is therefore optional with the creditor of the state to have his account divided into as many orders as he pleases, and to take out such orders at his pleasure; which orders pass current from citizen to citizen in the payment of taxes. Mr Coley might therefore have received the whole, or any part of his demand, and the treasurer's books, of consequence, be rendered no evidence in the case.

But the most singular features of the business appear, on reviewing the extraordinary transactions of the house before recited, in connection with a subsequent proceedure, which took place only three days after the acceptance of the above report.

In consequence of the before unheard of construction of the fee bill, given by the house in the case of Mr. Coley, a motion was made for the appointment of a committee to revise it, and report to the house what alterations, if any, were necessary to be made in said bill. This committee reported,

That having examined the law denominated the fee-bill, they were of opinion that it could not be so construed as to give an officer more than six cents per mile for actual travel, for serving any one process, altho several persons may be named in it, and the process served on them, except it be a forced construction.

The acceptance of this report by the house, does not appear on the journals, but this board have strong reasons to believe that it was accepted, and that the clerk of the house hath been negligent in his duty in not recording the same, as four reputable gentlemen, members of the legislature, have appeared before them, and under oath declared, that it was accepted by a majority of the house, and that the speaker declared it a vote.

This being true it muſt naturally follow, that the ſenſe of the houſe upon the right conſtruction of the fee bill, was perfectly reverſed in the courſe of three days, and Mr. Coley's charges, conſequently, illegal and exorbitant.

The council of cenſors deeming it their indiſpenſible duty, to lay before the people an accurate ſtatement, of every infringement upon the conſtitution and laws which ſhall come to their knowledge, are conſtrained to communicate the proceedings of a military tribunal, lately holden in this ſtate, which they conſider ſubverſive of the ſound rights and privileges of the free citizens of Vermont.

On the 19th of September 1799, the captain General iſſued his orders for calling a general court martial, to convene on the 25th of September then next following, at Middlebury, in the county of Addiſon, which was afterwards poſtponed and ordered to be holden on the 30th of ſaid September, at ſaid Middlebury, for the trial of ſuch perſons as ſhould be brought before them.

Agreeably to theſe General Orders, the officers therein named, met at the place appointed, on the day ſpecified, when David Whitney, Major General of the third diviſion of the militia of Vermont, who had previouſly been put under an arreſt, by the Captain General, was brought before ſaid court marſhal, and put on trial on the following articles of impeachment, or charges exhibited againſt him, which were lodged with the Captain General before the order for court martial iſſued.

To his excellency Iſaac Tichenor, eſq. *captain-general, and commander in chief in and over the ſtate of Vermont.*

David Whitney, majorgeneral of the third diviſion of the militia of this ſtate, is impeached by the underſigned officers in the firſt brigade of ſaid diviſion, for unmilitary conduct in this, to wit. We accuſe the ſaid David

Whitney, when majorgeneral as aforesaid, of having been guilty of the following crimes, and unmilitary conduct.

1st. For that the said David, when majorgeneral as aforesaid, in the most base and mean manner, debauched the wife of his friend, and thereby destroyed the peace and happiness of a respectable family.

2d. For that the said David when Majorgeneral, as aforesaid, meanly, cowardly, and tamely submitted himself, and without any resistance, to be taken and placed by two or three persons astride a pole or rail, between two horses with a rope round his neck holden by a boy, and in this situation permitted and suffered himself to be led and carried in open day, several miles, through the public streets of Addison.

3d. And for that the said David, when majorgeneral, as aforesaid, regardless of the dignity and propriety of conduct which became him, as an officer, did without just cause or provocation, insult, abuse and strike with his fist, an aged man, and late a respectable officer in the armies of the United States, and did refuse to make any restitution whatever, for the aforesaid injuries and abuse.

4th. And for that the said David when Majorgeneral as aforesaid void of the spirit belonging to an officer, and a gentleman, hath at divers times been guilty of unmilitary conduct, in publicly assaulting and beating his wife, and in associating himself with divers riotous and disorderly persons, and abusing the good and peaceable citizens of this state.

All which said conduct of the said David, being Major General as aforesaid, is unmilitary, and against the form, force and effect of the thirty second section of an act regulating and governing the militia of this state.

Wherefore your excelle cy is requeſted to arreſt the ſaid David, and order a court martial for the trial of ſaid David, in the premiſes, agreeable to the act aforeſaid.

We are with reſpect your Excelleney's humble ſervants,

JUSTICE BELLAMY, Major of the ſecond regiment in ſaid brigade.

JOSIAS SMITH, Captain of Cavalry in ſaid regiment.

Vergennes, Feb 7th, 1799.

Upon theſe articles of accuſation the ſaid David Whitney, was put on trial, and the ſentence of the court martial was as follows, viz

GENERAL ORDERS.

The Court martial which was holden at Middlebury, for the trial of Major General David Whitney, on the 30th ultimo, are of opinion, that the ſaid David Whitney, while Major General of the third diviſion of the militia of this ſtate, was guilty of great unmilitary conduct. And therefore do adjudge and ſentence, that the ſaid David Whitney be removed from his ſaid office of Major General, and incapable of holding any military commiſſion under the authority of the ſtate of Vermont, for and during the term of five years

The Captain General has approved the ſentence, and orders the court diſſolved.

By order of the Commander in Chief,

DAVID FAY, Adjutant General.

Windſor, October 23d, 1799.

The conſtitution of the ſtate of Vermont, in the 17th article of the bill of rights, expreſſly delares,

That no perſon in this ſtate, can in any caſe be ſubject to law martial, or to any penalties or pains by virtue of that law, except thoſe employed in the army, or the militia in actual ſervice.

But as it appears by the charges againſt ſaid Whitney, that the allegations and ſentence againſt him are predicated upon the 32d ſection of an act

regulating and governing the militia of this ſtate, which is in the words following; viz.

Section 32. And it is hereby further enacted, *That every officer holding a commiſſion in the militia, who ſhall be accuſed of any unmilitary conduct, neglect of duty, or diſobedience of orders, or who ſhall when on duty appear or behave himſelf in an unofficer like manner; or ſhall wilfully injure thoſe who are under his command, he ſhall be liable to be tried by a court martial, and if found guilty, to be ſentenced by ſaid court to be reprimanded in orders, or to be removed from office.*

The Council of Cenſors have duly and carefully examined the laid ſection and are of opinion, that the words or terms unmilitary conduct, neglect of duty, and diſobedience of orders, muſt have an appropriate meaning, and relate to being legally called, or in the actual exercile of military functions, and cannot but by a forced conſtruction, be wreſted to warrant the commander in chief, or any other officer, in arreſting and arraigning thoſe in subordination to them, before a military tribunal, for any crimes or misdemeanors with which they may be charged, when not acting in a military capacity, or legally called thereto.

From hence it follows, that the Commander in Chief, and the members of the court martial, have aſſumed to themſelves new and unheard of jurisdictional powers, by which they have broken down that ſacred principle, which is now incorporated with the very eſſence of freedom, *That the military ſhall be kept under ſtrict ſubordination to, and governed by the civil power*; by arraigning a citizen before an unconſtitutional military tribunal, ſubjecting him to an illegal trial, and paſſing an ignominious martial ſentence upon him, for crimes and misdemeanors, not one of

which are even alledged to have been committed while he was acting in a Military capacity, and for which of conlequence he could only be amenable before a civil tribunal.

The council are therefore obliged to declare, that they eſteem the proceedings in the cale of Major general Whitney, to be a bold attempt, to extend the authority of the military over the civil power, and that it is truly alarming, as its ultimate tendency muſt appear to be, to overwhelm our civil jurisprudence, in the vortex of military tribunals, abridging the right of trial by jury, and giving the commander in chief an undue influence and authority over the liberties and privileges of his fellow citizens.

It is therefore the opinion of this board, that the order for, and trial of Major General David Whitney, by court martial, without alledging crimes or misdemeanors, committed while in the execution of, or ſpecially called to the diſcharge of the duties of his military funĉtions, are flagrant violations of the conſtitution and laws of this ſtate, and that the conduct of the commander in chief, in arreſting Major General David Whitney, ordering him before the court martial, and approving and publiſhing the ſentence of the ſaid court martial, is highly cenſurable.

In our enquiry, "whether the public taxes have been juſtly laid and collected in all parts of this commonwealth," we are of opinion, that the act paſſed by the legiſlature in October 1797, laying a tax of one cent per acre, on all lands in this ſtate indiſcriminately, was unequal andunjuſt. It is a principle univerſally allowed, that property ought to be taxed in proportion to its real value, and annual income; and though it is impoſſible by any general rule to do

perfect juſtice, yet the mode that makes the neareſt approach thereto is to be preferred. The taxing the wild and uncultivated mountains per acre, equal to the lands of the higheſt cultivation, or covered with elegant buildings, can bear no proportionable eſtimate, either in value or income. The ſtatement annexed will ſhew the amount of taxes, which have been levied and not collected during the laſt ſeptenary.

In our inquiries whether the laws have been duly executed, for the laſt ſeptenary, we are happy to declare, that we find but few exceptions to their having been duly carried into effect.

The laws relating to weights and meaſures, which make it the duty of each county treaſurer, and the ſelectmen of each organnized town, to provide ſtandards of weights and meaſures, for the uſe of ſuch counties and towns, have not been complied with. Several counties and many towns have omitted to procure ſuch ſtandards.

It is evident that this neglect in its conſequences, moſt ſenſibly affects community. The honeſt are liable to err, and the diſhoneſt may purſue their evil practices with impunity. We conceive the fault which occaſions this evil, reſts principally with the ſeveral counties, in not furniſhing their treaſurer with the means of procuring ſtandards.

The law provided to reſtrain gaming, a practice that tends to the miſpending of time and property, and introduces every ſpecies of immorality and diſſipation, we are unhappy to ſay a law ſo neceſſary in its nature, and beneficial in its deſigns hath, during the laſt ſeptenary, been greatly diſregarded. And that the law for the due obſervation of the Sabbath, hath not been duly obſerved and kept, but its binding ob-

ligations too often diſpenſed with by civil miniſters on trivial pretences.

The laws for the puniſhment of profane ſwearing, we are ſorry to be obliged to ſay, is little regarded. The ear of the moral citizen is frequently grated by profane oaths and horrid imprecations, and the ſacred obligation of oaths taken in courts of juſtice is thereby greatly impaired. When exiſting laws are not executed but diſregarded, it tends to deſtroy the energy of government, and bring the law into contempt. This evil appears to ariſe partly from the neglect of the duty of officers appointed to carry the law into execution, and partly from the deficiency of the law in not ſufficiently pointing out and defining the duty of informing officers.

In enquiring into the treaſury department, we find the treaſurer's books have been kept fair and regular, and his public accounts to have been duly audited, during the laſt ſeptenary. As to the diſpoſal of the public monies we find they have been paid out agreeable to appropriations made by law.

Complaints having been exhibited to this board, of mal conduct in the ſheriff's department, we have thought it our duty to go into an impartial enquiry on the ſubject. Notwithſtanding the meaſures taken by this board to procure and have laid before them certified copies from the ſeveral clerks of the ſupreme and county courts in this ſtate, of the ſheriff's returns of fees charged and ſums allowed for ſerving venires of the grand and petit juries for the laſt ſeptenary, they have not been able to procure ſaid documents from the eaſtern counties, principally owing to the non-attendance of ſeveral of the members of the eaſtern diſtrict.

As far as they have been able to procure the neceſſary documents to inveſtigate that ſubject, they find

that the ſheriffs in Bennington county, for the laſt ſeptenary, excepting in thoſe caſes which they have laid before a conſtitutional board, have not taken or charged greater fees than was allowed by law; alſo in the county of Rutland, the ſheriffs have not charged or received greater fees than were allowed by law: in the county of Chittenden we have not been able, for want of evidence, to aſcertain the actual travel, in many inſtances, and therefore cannot ſay they have exceeded the law, but we find the charges much augmented ſince the year 1797. In the counties of Addiſon and Franklin, we find ſome inſtances irreconcileable with the principles of law, which will be laid before a proper board, and alſo the charges of the ſheriffs for ſerving venires, in other inſtances have been augmented conſiderably, for ſeveral of the laſt years.

We cannot cloſe the ſubject without obſerving, that it is a principle of duty which we owe to you and ourſelves, that has led us thus to ſpeak our ſentiments, with a freedom which we are not inſenſible will be diſagreeable to ſome: but as we have been actuated ſolely by a deſire of contributing our mite to the honor and felicity of the community; conſcious of no ſiniſter or perſonal views in our enquiries, we ſubmit our opinions to your candid conſideration. And ſhould we be ſo unhappy as materially to differ in ſentiment from the reſpectable freemen of this commonwealth, ſtill it will afford us conſolation to reflect on the rectitude of our intentions, whilſt we are ſenſible it is the common lot of human nature to be liable to err.

By order of the Council,

MOSES ROBINSON, Preſident.

Atteſt, DAVID FAY, *Secretary.*

An account of the arrearages of taxes, granted last septenary, viz. Tax granted, Oct. 1792, to ditto granted 1798 inclusive, and also including the half penny land tax for raising thirty thousand dollars.

Towns Names Delinquent.	Denomination of Taxe.	Arrearages			Remark.
North-Hero	Two pence half	£.		17	
Isle la mott	penny tax 1792.		2	11 6	
Fairfax			2	6 7	
Newhaven				7 6	
Middlebury			1	5 5	
			7	8 0	
	Halfpenny tax to raise 30,000 dols.				
South Hero		£.	21	13 0	Extented
North Hero			2	5 0	Do.
Isle la mott			9	7 10	
Alburgh,			2	0 10	—
Colchester			4	16 0	
		£.	40	2 8	
	1793, tax of 2d.				
Barnard		£.	32	5 4	Extented
Craftsbury			2	13 10	
		£.	34	19 2	
	1794 tax of 2d.				
Bennington		£.	3	18 7	
	1795 tax of 2d.				
Fairhaven		£.		15 6	
Pawlet				3 5	
Rutland			2	11 10	
Wallingford,			4	14 4	
Hartland			36	10 9	Extented and commissioners return must be paid by selectmen.
Saltash				6 2	
Weybridge			1	9 10	
Danville			4	9 3	
Shelden			2	2 3	
St. Albans			2	6 6	
Burlington				18 6	
Moretown			1	2 6	
Fairlee			4	7 3	
		£.	61	8 0	

Same continued, with the amount of first page bro't over.

£. 147 16 5

Delinquent towns Names, and denomination of taxes.	Dols.	Cts.	Remarks.
1796, Tax of four cents.			
Rutland	22	56	
Wallingford	123	85	Extented
Fairlee	80	12	Extented and nonested
Montpellier	2	79	selectmen liable
Thetford	99	95	Extented and non. ested. se-
Vershire	82	77	In ex'n. lectmen liable
Leicester		96	
Moreton	74	82	Extented.
Vergennes			
Burlington	4	64	
Colchester	7	74	
Highgate	2	24	
Isle la mott	7	25	
Williston	4	40	
Milton	25	99	Extented.
Richford	4	8	
	544	26	
Cent tax of 1797.			
Townshend	145	5	
Sommerset	87	30	
Hubbardton	34	91	
Wallingford	165	45	Extented
Hartland	90	31	Do.
Norwich	15	20	
Reading	78	89	Extented.
Plymouth	131	88	Do.
Middlebury	14	96	
Salisbury	10	3	
Barre	44	7	
Chelsea	153	73	Extented.
Newbury	88	34	
Thetford	244	12	Extented and nonested
Tunbridge	41	83	Selectmen liable.
	1,246	07	

Dilinquent towns Names, Denomination of taxes.	Dls.	Cts.	Remarks.
Amount bro't over	1246	07	
Cent land tax of '97 con.			
Duxbury	131	88	Extented
Moretown	119	54	Extented
Stowe	10	25	
Fairfax	16	87	Extented
Highgate	30	65	Do.
Berkshire	29	40	
Cabot	45	88	Do.
Danville	9	2	
Guildhall	2	58	
Peacham	53		Do.
Walden	44	43	Do.
Darby	69	52	Do.
On the unorganized towns in Rutland county.	224	30	Sheriff's hands.
	2,052	87	
1798.			
Manchester	115	71	non-elted selectmen liable.
Chittenden	34	62	Extented.
Harwich	18	22	Do.
Pawlet	276	74	Do.
Pitsford	125	32	
Poultney	55	12	Do.
Shrewsbury	26	40	Do.
Wallingford	113	27	
Bethel	10		
Bridgewater	65	60	
Baltimore	18	17	
Norwich	15	20	
Plymouth	28	59	
Springfield	9	98	
Woodstock	140	70	
Addison	6	30	
Newhaven	29	26	
Whiting	2	04	Extented.
	1093	24	

Delinquent towns, & denomination of tax.	Dls.	Cts.	Remarks.
Amount bro't over.	1093	24	
1798 tax continued.			
Bradford	110	26	
Newbury	163	22	
Randolph	231	35	Extented
Thetford	121	41	Do.
Tunbridge	138	21	Do.
Essex	77	99	Do.
Huntington	40	01	Do.
Richmond	20	80	Do.
	2004	49	

	£.				Dls.	Cts.
1792 tax.	7	8	0			
Halfpenny tax.	40	2	8	1796 Tax.	544	26
1793 tax.	34	19	2	1797.	2052	87
1794.	3	18	7	1798.	2004	49
1795.	61	8				
					4601	62
Amount 1st p.	£. 147	16	5	Equal to	491	40
				Total.	5093	02

In COUNCIL of CENSORS, February 4, 1800.

Reſolved, That nine hundred copies of the Addreſs be printed, for the peruſal of the people, and that the ſtate printer be requeſted, to print the ſame immediately, and tranſmit them without delay, by expreſs, to the ſheriffs of the ſeveral counties, to be by them immediately tranſmited to the town clerks of the ſeveral towns, for the uſe of the inhabitants.

The printer is requeſted to apportion the books to each county, ſuitably, and the ſheriff's to apportion them to the town clerks, as equally as may be, both the printer and the ſheriffs having reſpect to the number of inhabitants in the reſpective counties and towns; and that the ſaid town clerks diſtribute ſaid copies among the people of their ſeveral towns, in the moſt ſuitable method, ſo as to give general information; and alſo that this reſolution be publiſhed in all the newſpapers printed in this ſtate.

Reſolved, That the thanks of this Council be returned to the honorable Moſes Robinſon, eſquire, for his ſervices as preſident of this board, during their ſeveral ſeſſions.

A true Copy from the Journals of the Council of Cenſors. *Atteſt.*

DAVID FAY, *Secretary.*